

In the Matter of Merchant Mariner's Document No. Z-237264 and all
other Licenses, Certificates and Documents
Issued to: FRANCISCO MOLAN GARCIA

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

905

FRANCISCO MOLAN GARCIA

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By order dated 7 December 1955, an Examiner of the United States Coast Guard at New York, New York, revoked Merchant Mariner's Document No. Z-237264 issued to Francisco Molan Garcia upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as bell bugler on board the American SS BRAZIL under authority of the document above described, on or about 17 September 1955, while said vessel was at sea, he wrongfully placed his hands on the body of a female passenger while she was in bed in the stateroom.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by counsel of his own choice. Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charge and each specification proffered against him. (A second specification was later found "not proved by the Examiner.)

The Investigating Officer made his opening statement. He then introduced in evidence a certified copy of extracts from the Shipping Articles of the BRAZIL, a certified copy of an entry in her Official Logbook, and the deposition of Miss Jonnie L. Sneed which was taken by interrogatories and cross-interrogatories at Houston, Texas. The Investigating Officer testified concerning Miss Sneed's identification of Appellant from among six other of the ship's personnel upon the arrival of the ship in New York.

In defense, Appellant offered in evidence his sworn testimony. He stated that he went in Miss Sneed's room (to deliver her invitation to the Captain's dinner) when she said "Come in",; Miss Sneed was sitting on her bed reading the ship's newspaper; she was dressed in a bathing suit and blue jeans; she complained about the

sunburn peeling on her back since she would have to wear a low-cut dress to the Captain's dinner; Miss Sneed asked Appellant to feel her peeling sunburn after she stood up; and Appellant merely touched the back of her shoulder when he was at the doorway on the way out of the room. Appellant also testified that Miss Sneed made a false complaint either because she became angry when Appellant would not deliver a note for her on the previous night just before getting underway or because a person on the ship's staff persuaded her to do this in order to get Appellant in trouble.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his decision and concluded that the charge and one specification had been proved. He then entered the order revoking Appellant's Merchant Mariner's Document N. Z-237264 and all other licenses, certificates and documents issued to Appellant by the United States Coast Guard or its predecessor authority.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 17 September 1955, Appellant was serving as bell bugler on board the American SS BRAZIL and acting under authority of his Merchant Mariner's Document No. Z-237264 while the ship was at sea the day after departing from Rio de Janeiro, Brazil.

At approximately 1000 on this date, Appellant went to the stateroom of Miss Jonnie L. Sneed, a 17-year old, unescorted, student passenger, in order to deliver an invitation to the Captain's dinner. When Appellant knocked on the door and Miss Sneed replied "yes," he accepted this as an invitation to enter the room and he did so. Miss Sneed was in or on the bed. Appellant approached her and after some conversation, he placed one of his hands on her back. Miss Sneed was in or on the bed. Appellant approached her and after some conversation, he placed one of his hands on her back. Miss Sneed moved away and told Appellant to get out. He then left the room.

Slightly more than an hour later, Miss Sneed complained to the Chief Steward about this incident. Shortly thereafter, Appellant was interviewed. He stated that Miss Sneed had asked him to rub her back after inviting him to come in when he knocked.

Appellant has been shipping steadily on merchant vessels since 1951 and intermittently prior to then. He has no prior record. He was 49 years of age when the incident occurred.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that:

1. The deposition by interrogatories, without corroborating testimony, is not sufficient in a case involving a serious charge such as this one to overcome the oral testimony of Appellant to the contrary.
2. At the most, this was a casual incident which was not an offense of such a serious nature as to deserve the order of revocation. This is borne out by the fact that Miss Sneed did not complain until more than an hour later.
3. When asked if she had made any remarks to Appellant about peeling from sunburn. Miss Sneed answered, "I am fairly sure that I did not." This indicates a lack of certainty on her part as to what actually happened.

In conclusion, Appellant states that the facts do not show a serious intent even though he may have been technically guilty of the offense alleged. Possibly, the touching of Miss Sneed was due to a misunderstanding and was not wrongful. It is respectfully requested that Appellant be found not guilty or, alternatively, placed on probation.

APPEARANCE ON APPEAL: Messrs. Cooper, Ostrin and DeVarco of New York City by Thomas J. Doyle, Esquire of Counsel.

OPINION

The Examiner, as the trier of facts, was not impressed by Appellant's testimony. The Examiner expressly rejected much of the latter's story by adopting the version presented by Miss Sneed in her deposition. In part, she stated that Appellant's conduct was not encouraged by her. As stated by the Examiner, it is not logical that Miss Sneed would have been friendly towards Appellant if she had been angry with him the night before because he would not deliver a note for her. Nor is there any support in the record for Appellant's suggestion that someone in the crew enticed her to make a false complaint against Appellant.

Miss Sneed's deposition constitutes substantial evidence in support of the allegations. Appellant was permitted full opportunity to obtain counsel at the hearing and to submit cross-interrogatories for Miss Sneed to answer. In cases of this nature, it is seldom possible to obtain corroborating testimony. Appellant admitted in his self-serving testimony that he placed his

hand on Miss Sneed. On appeal, the impropriety of this act is recognized even though it is referred to as a casual or technical incident of a minor nature. Since the deposition leaves some doubt about certain matters, it is impossible to ascertain the exact facts from the present record. Apparently, the deposition overstates the truth in some respects. But enough is available from the testimony of Appellant to indicate that he was guilty of solecism whether or not it was due to some misunderstanding on his part.

The record does not support the contention that Miss Sneed had a motive to make an entirely false complaint. Hence, there is no logical reason why she should do so and suffer the considerable embarrassment involved in making such a complaint about a member of the crew. The one-hour delay in reporting this matter is understandable. Miss Sneed needed some time to get dressed and to determine her course of action. It has been held that five months is not too late for a ship's passenger to complain about a much more serious abuse of her person by a crew member. *Panama Mail S.S. Co. v. Vargas* (C.C.A. 9, 1929), 33 F2d 894.

When asked if she remarked to Appellant about peeling from sunburn, Miss Sneed answered, "I am fairly sure that I did not." Appellant contends that this indicates a lack of certainty on her part. On the other hand, she could have categorically denied having made any such remark, if she intentionally were not telling the truth in reply to other questions. This answer seems to me to be a frank admission that she was not certain of all the details.

Considering all the circumstances and in view of Appellant's prior clear record, the order of revocation will be modified to a lengthy outright suspension.

Appellant has been found guilty of an offense against the person of a passenger. The courts have placed upon the operators of merchant vessels the duty to exercise the very highest degree of care for the protection and safety of their passengers. Weade v. Dichman, Wright and Pugh, Inc. (1949), 337 U.S. 801; Compagnie Generale Transatlantique v. Rivers (C.C.A. 2, 1914), 211 Fed. 294. This obligation extends equally to the members of the crew. Judge Story stated more than a century ago that the contractual obligation to female passengers is one of peculiar responsibility and delicacy; and the contract includes an implied stipulation against immodesty of approach, disregard of feelings, and every interference with the passenger's person. Chamberlain v. Chandler, Fed. Cas. 2575, decided in 1823. Appellant did not comply with these standards.

ORDER

the order of the Examiner dated at New York, New York, on 7 December 1955, is modified to provide that Merchant Mariner's Document No. Z-237264, and all other licenses, certificates and documents issued to Appellant by the United States Coast Guard or its predecessor authority, are suspended for a period of twelve (12) months.

As so MODIFIED, said order is AFFIRMED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

dated at Washington, D. C., this 28th day of June, 1956.